

Internal Revenue Service

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Washington, DC 20224

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Person To Contact:
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Date:
March 03, 2008

LEGEND:

Taxpayer	=
State	=
Country A	=
Country B	=
Country C	=
Country D	=

Dear :

This letter responds to a letter dated August 30, 2007, requesting a ruling under § 638 of the Internal Revenue Code.

The facts as represented are as follows:

Taxpayer is a State corporation. Taxpayer's primary business is to provide technical diving services related to installation, upgrading and decommissioning of pipelines and production infrastructure of the oil and gas industry. Commercial diving services include inspection, maintenance, repair and support services for subsea construction and fabrication. Taxpayer leases foreign vessels to support its business line from foreign charter parties that, to the best of Taxpayer's knowledge, otherwise have no presence or business nexus to the United States.

Taxpayer has entered into time charter arrangements for the long-term use of four vessels owned by third parties (Foreign Vessel Owners) incorporated under the laws of Country A, Country B, Country C, and Country D. Each Foreign Vessel Owner provides and compensates the marine crew for the vessel.

Each vessel maintains a dynamic position system which allows the vessels to maintain position on location without the use of anchors. Taxpayer uses each of the vessels as a staging point from which to deploy divers, remote operated vehicles, and any other submersible and semi-submersible devices necessary to inspect and repair infrastructure located on the floor of the outer continental shelf of the United States (OCS). At no time will the time charter vessels be used to work in areas less than 12 miles from the U.S. coastline. Taxpayer's work with respect to activities in the OCS consists of the removal and repair of underwater oil and natural gas pipelines, inspection, maintenance and repair of production platforms and wellheads and the salvage of pipeline and production related equipment.

Based upon the above information, you request we rule that Taxpayer is not required to request Form W8-ECI from Foreign Vessel Owners for time charter payments made to those foreign corporations for the use of their vessels from which to stage subsea remediation and repair services on the OCS, because such activities are not related to activities or personal services with respect to the exploration or exploitation of natural resources within the meaning of § 638.

Section 861(a)(3) of the Code provides, generally, that compensation for labor or personal services performed in the United States shall be treated as gross income from sources within the United States.

Section 863(d)(1) provides that, except as provided in regulations, any income derived from space or ocean activity is sourced in the United States if derived by a United States person and is sourced outside the United States if derived by a person other than a United States person.

Section 863(d)(2)(B)(iii) states that the term "space or ocean activity" shall not include "any activity with respect to mines, oil and gas wells, or other natural deposits to the extent within the United States or any foreign country or possession of the United States (as defined in section 638).

Under § 638, for purposes of applying the income and employment tax provisions of the Code (including those relating to the source of income from personal services) with respect to mines, oil and gas wells, and other natural deposits, the term "United States" when used in a geographical sense includes the seabed and subsoil of the submarine areas adjacent to the territorial waters of the United States over which the United States has exclusive rights, in accordance with international law, with respect to the exploration and exploitation of natural resources.

Section 1.638-1(a)(1) of the Income Tax Regulations provides that the terms "Continental Shelf of the United States" or "Continental Shelf of a possession of the United States," as used in that section, refer to the seabed and subsoil included, respectively, in the terms "United States" and "possession of the United States."

Under § 1.638-1(c)(1), persons, property, or activities which are engaged in or related to the exploration for, or exploitation of, mines, oil and gas wells, or other natural deposits need not be physically upon, connected, or attached to the seabed or subsoil referred to in subparagraph (1) or (2) of § 1.638-1(a) to be deemed to be within the United States, a possession of the United States, or a foreign country, as the case may be.

Section 1.638-1(c)(4) clarifies that persons, property, or activities are within the United States, a possession of the United States pursuant to this paragraph, only to the extent such persons, property, or activities are engaged in or related to the exploration for or exploitation of, mines, oil and gas wells, or other natural deposits.

As mentioned above, the activities at issue consist of the removal and repair of underwater oil and natural gas pipelines, inspection, maintenance and repair of production platforms and wellheads and the salvage of pipeline and production related equipment performed by Taxpayer through the use of the vessels leased from Foreign Vessel Owners. These activities are necessary for the accomplishment of natural resources exploitation. Without the Taxpayer's services performed in the OCS, the natural resources once explored could not be transported and made available for use. Although the services do not constitute the actual drilling of oil and gas wells, such repair and remediation of oil and gas infrastructure are clearly related to the exploitation of natural resources, and fall within the ambit of § 638.

Accordingly, Taxpayer's activities in the OCS are related to the exploration for or exploitation of mines, oil and gas wells, or other natural deposits within the meaning of § 638. Therefore, income derived by each Foreign Vessel Owner pursuant to the time charter arrangement is income from sources within the United States.

Sections 1441 and 1442 generally require all persons having the control, receipt, custody, disposal, or payment of any items of income to withhold tax on the income (to the extent that any of such items constitutes gross income from sources within the United States) paid to any nonresident alien individual or foreign corporations.

Section 1.1441-4(a)(1) provides that generally, no withholding of tax is required under § 1441 on income otherwise subject to withholding if the income is (or is deemed to be) effectively connected with the conduct of a trade or business within the United States and is includible in the beneficial owner's gross income for the taxable year.

Section 1.1441-4(a)(2) provides that absent actual knowledge or reason to know otherwise, a withholding agent may rely on a claim of exemption based upon § 1.1441-4(a)(1) if, prior to the payment to the foreign person, the withholding agent can reliably associate the payment with a Form W-8 upon which it can rely to treat the payment as made to a foreign beneficial owner in accordance with § 1.1441-1(e)(1)(ii).

Taxpayer requests a ruling that Taxpayer is not required to request Form W-8ECI from Foreign Vessel Owners for payments made under the time charter arrangements. Section 4.01(3) of Rev. Proc. 2008-7, 2008-1 I.R.B. 229, provides that a ruling will not ordinarily be issued regarding whether a taxpayer is engaged in a trade or business within the United States, and whether income is effectively connected with the conduct of a trade or business within the United States. The issue of whether Taxpayer must request Form W-8ECI from the Foreign Vessel Owner depends on whether the Foreign Vessel Owner is engaged in U.S. trade or business. Therefore, no opinion is expressed as to the U. S. tax status of the Foreign Vessel Owners, and to whether Form W-8ECI is required from the Foreign Vessel Owners.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Joseph H. Makurath
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

cc: